IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5300 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DULBARAM B MAHARAJ

Versus

JAGJIVANDAS BAKTIRAM

Appearance:

MR MC BHATT for the Petitioner.

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 21/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged the judgment and order passed by the Small Causes Court, Ahmedabad, in P.S.R.P.No.4 of 1987.

The petitioner herein was the original applicant before the Small Causes Court at Ahmedabad and he initiated proceedings under Section 41 of the Presidency Small Causes Court Act. The case of the petitioner before the trial court is that the respondent herein is a licensee of the suit premises and he was given the accommodation free of charge since he is the brother of the wife of the petitioner. In spite of notice, since he has not vacated the suit premises, the application under Section 41 was filed by the present petitioner against the respondent.

Before the trial court, the respondent resisted the said claim on the ground that he is a sub-tenant of the suit premises. He denied that the respondent is in any way related to the wife of the petitioner (original applicant). The respondent took the stand before the trial court that he is a sub-tenant on a monthly rent of Rs.10/- and he is occupying the suit premises since last 29 years. According to the respondent, since the applicant demanded more rent and since the respondent did not oblige him for the same, ultimately, the present proceedings have been initiated. The trial court, after appreciating the documentary and oral evidence on the record, came to the conclusion that the petitioner-original applicant had failed to establish his case about licence. On appreciation of evidence, the trial court found that the respondent is in possession of the suit premises since considerable period and that it cannot be said that he is a licensee of the suit premises. The trial court has considered various documentary evidence and cogent reasons are given by the trial court in paragraph 8 of the order. In a petition under Article 227 of the Constitution of India, this Court cannot re-appreciate the evidence on record. Considering the reasoning of the trial court, in my view, no interference of this Court is called for in exercise of its extraordinary jurisdiction under Article 227 of the Constitution of India. The trial court has also found that the application of the applicant is time barred as even though notice was given in June, 1982, the application under Section 41 was filed before the trial court in February, 1987. The order of the trial court, in my view, is not required to be interfered with in this petition. It is, however, clarified that the proceedings before the trial court are of the nature of summary proceedings under Section 41 of the Act. It would be open for the present petitioner to initiate appropriate proceedings in accordance with law by filing appropriate title suit. If any such proceedings are taken, it would be open for the petitioner or respondent to take all

available points in law.

This petition is accordingly rejected. Rule is discharged. No costs.

21st July, 2004 (P.B. Majmudar, J.)

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(apj)